when Cap. 86 was amended by the inclusion of paragraph (c) to section 18.

The Sarawak Attorney-General stated that section 18(c) was enacted because of a Supreme Court decision that the widow of a statutory tenant residing with him at the time of his death did not become a statutory tenant and was therefore not protected. The decision is the unreported case of Civil Appeal No. 12 of 1951 in the Supreme Court of Sarawak dismissing an appeal on July 27, 1951 from the First Circuit Court in the case of *Sim Swee Teng* v. *Tnay Swee Kiaw*[9] (Civil Case No. 44/51). The facts are substantially similar to the case now before us. There plaintiff was the registered proprietor of No. 14, Gartak Street, Kuching. Defendant's husband was the tenant of the ground floor of the premises paying rent of $45 per month. His tenancy was a monthly one. On February 1, 1951 plaintiff sent a notice to defendant's husband giving him one month to quit. When the notice expired he remained on the premises. He died on March 28, 1951. Defendant became administratrix of his estate and was in occupation of the premises. Plaintiff claimed possession on the ground that defendant was a trespasser as her husband's contractual tenancy was terminated before his death and defendant was never accepted as tenant.

Digby J. held that on defendant's husband's death he was at best a statutory tenant. Defendant based her claim entirely on her letters of administration to the husband's estate. The learned judge observed in these words:—

"But a statutory tenancy is no more than a personal right to continue in occupation. It is not properly capable of devolving on death. It cannot be disposed of by will, nor does it pass upon an intestacy to the tenant's heirs. Were this not so grave difficulties would result. A statutory tenancy exists only if, on the state of facts appertaining at the termination of the previous tenancy, the person claiming to be the statutory tenant was protected by section 16(1) of the Rent Control Ordinance, 1948, (see judgment of Murray Aynsley C.J. in the Singapore case *Ida-Fernandez (m.w.)* v. *M. Murugiah* [1950] M.L.J. page 83; a decision which I have followed in this court). A person who was not then a protected tenant cannot be a statutory tenant. If a statutory tenancy was capable of devolving on death the point of time to which the court would have to look in order to ascertain whether a personal representative or a beneficiary, as the case might be, had been protected by the Ordinance and had accordingly become a statutory tenant, would not be the date of termination of the previous tenancy, but, in the case of personal representatives, the date of death, and, in the case of beneficiaries, the date the interest was transferred to them by the executors or administrators.

This difficulty is overcome in England by including the widow of a tenant, who was living with him at his death, in the definition of 'tenant'. Unfortunately the Sarawak Ordinance does not contain a similar provision. This appears to be a serious gap in the law as grave hardship may be caused to the bereaved dependants of a statutory tenant. A copy of this judgment will be served on the Attorney-General in order to draw his attention to the point."

In dismissing the appeal Dr. R.Y. Hedges, the Chief Justice stated:—

"If I could allow this appeal I should be happy to do so as it is a case involving some hardship. I have been much assisted by the arguments put forward by Mr. Dunbar and it is with regret that I find myself unable to give to the term 'statutory tenancy' the extended meaning he sought to apply."

As the appropriate amendment was made to the Ordinance in 1951 for the protection of the widow of a statutory tenant by section 18(c), the learned judge was able to avoid making a decision which would cause grave hardship on the deceased's widow and son. We are happy to say that what the Legislature had done nearly 30 years ago in filling the gap in the law makes it possible for the court today to protect a widow of a statutory tenant who would otherwise be thrown out of the premises.

Section 18 indicates quite clearly who are to be regarded as statutory tenants for the purpose of Cap. 86. In our view, this provision would not be necessary if a statutory tenant could be said to have interest which he could assign and which could form part of his estate. Cap. 86 makes no distinction between domestic and business premises. In other words, the Legislature intended to put tenants of business premises and tenants of domestic premises in the same position so that Cap. 86 applies equally to all premises affected by its provisions. It is therefore not surprising that in the light of the definition of "premises" the Legislature purposely omitted the words "on the demised premises" in section 18(c). It would be ridiculous to find the widow and members of the family of the deceased tenant who merely used the premises as an office, factory or school residing with him in his office, factory or school when he had another proper and perhaps better home to share with his family not protected by Cap. 86.

If it is thought that such protection is no more needed by widows or members of the family of deceased tenant this can easily be changed by the Legislature. Until the law is changed the court must construe the law as it stands.

For reasons given we would dismiss the appeal with costs. Deposit to respondent against taxed costs.

Appeal dismissed.

Solicitors: *Chan, Jugah, Wan Ullok & Co.: Yong & Co.*

YEEP MOOI v. CHU CHIN CHUA & ORS.

[F.C. (Raja Azlan Shah C.J. (Malaya), Syed Othman & Salleh Abas F.JJ.) June 7 & August 10, 1960]

[Kota Bharu — Federal Court Civil Appeal No. 14 of 1979]

Contract — Deposit of money with pawnshop — Whether person depositing is a moneylender — Whether contract illegal — Person accepting deposit not borrowing company — Whether money can be recovered — Moneylenders Act, 1951, ss. 2 and 3 — Banking Ordinance, 1958, s. 2 — Pawnbrokers Enactment, Trengganu, 1356 — Borrowing Companies Act, 1969, ss. 2 and 3 — Contracts Act, 1950, s. 66.

Moneylending — Whether person depositing money with pawnshop is a moneylender — Scope of Moneylenders Ordinance, 1951, s. 3.

The appellant had deposited some money with a person carrying on the business of a pawnshop. She brought an action for the recovery of the money. Her action was dismissed, as it was held that she was an unlicensed moneylender and the contract was void and unenforceable. Her appeal to the High Court was dismissed and she appealed to the Federal Court.

Held: (1) although the appellant had lent her money on interest she was not a moneylender as she did not carry on the business of moneylending;

(2) the person accepting the deposits was carrying on a borrowing business and as he was not a public company or a licensed borrowing company. the transaction was illegal, void and unenforceable;

(3) in this case section 66 of the Contracts Act applies as the contract was discovered to be void, and the appellant was entitled to the restitution of her money.

Cases referred to:-

(1) *Ngui Mui Khin & Anor.* v. *Gillespie Bros. & Company Ltd.* [1980] 2 M.L.J. 9.

(2) *Kirkwood* v. *Gadd* [1910] A.C. 422.

(3) *United Dominions Trust* v. *Kirkwood* [1966] 1 All E.R. 968, 974-975.

(4) *Menaka* v. *Lum Kum Chum* [1977] 1 M.L.J. 91.

FEDERAL COURT.

L.H. Singh (*Dulip Singh* with him) for the appellant.

Harban Singh for the 1st & 9th respondents.

Lee Leng Guan for the 10th respondent.

Cur. Adv. Vult.

Salleh Abas F.J.: The appellant is a seamstress living in Dungun, Trengganu. On January 22, 1970, she deposited a sum of $5,000 with Kow Sin Pajak Gadai (the pawnshop) of No. 58 Kuala Brang, Ulu Trengganu bearing interest at the rate of 14.4% per annum. The pawnshop was owned and run by one Mr. Choo Shin Shian, who lived in Dungun. He passed away on September 10, 1971. For the purpose of this judgment he is referred to as "the deceased". The deceased started the pawnshop business on July 1, 1957 (Exhibit P5) and held pawnbroker's licences up to December 31, 1968 to cover the business (Exhibits P3, D8 and D9). From January 1, 1969 onwards till his death the licence in respect of the business was issued to the first respondent who was the deceased's nephew. The first respondent gave no evidence at the trial but he admitted in paragraph 2 of his statement of defence that the deceased was the proprietor whilst the pawnbroker licence was issued by the authorities in his name. There is no evidence as to what part the first respondent played in respect of the pawnshop business other than that he was a mere licence holder. The deceased, however, ran the business with the assistance of the ninth respondent, who is his son. On the death of the deceased the tenth respondent, another son of the deceased who is a public accountant by profession, became the deceased's personal representative. During his lifetime the deceased financed his pawnshop business by using money deposited with the pawnshop by members of the public. He paid interest on such deposits. The rate was lower than that at which the pawnshop charged on the loan to a pawner of articles, but higher that that at which any commercial bank paid on deposits with it. The pawnshop took deposits from 41 persons in all, including the appellant. According to her evidence she gave the money to the deceased in Dungun, where the deceased lived. She did not go to the pawnshop at Kuala Brang to deposit the sum. The deceased issued a receipt for the deposit (Exhibit P2), signed by him as the treasurer and by the ninth respondent as the manager. From the date of the deposit till the death of the deceased, the appellant received interest on this deposit once from the deceased. Earlier in 1969 she had deposited a sum of $1,000 with the pawnshop under a similar arrangement, but had since then withdrawn the amount. On March 1, 1971, the appellant deposited another sum of $5,000 at 12% with another pawnshop for two months and withdrew the sum on May 2, 1971 (Exhibit D10 and D11). She knew that depositing money at the pawnshop earns interest.

After the death of the deceased the appellant asked the tenth respondent for the refund of her deposit. Having failed to obtain the restitution, she then started a civil action in Dungun Sessions Court on October 9, 1975, suing the first, ninth and tenth respondents and seven other persons. Before the trial took place the action against these seven persons were withdrawn by the appellant. The case was then fought before the Sessions Court, the High Court and before us only against the first, ninth and tenth respondents. The learned President who heard the case in the first instance took the view that the deposit transaction between the appellant and the deceased pawnbroker was a void contract because the transaction was caught by Moneylenders Ordinance, 1951. He held that the appellant was an unlicensed moneylender and the contract was illegal and as such unenforceable and she was therefore left without remedy. On appeal to the High Court, Abdul Razak J. upheld this decision and he likewise held that appellant was not entitled to the restitution because the appellant was *in pari delicto* as the deceased in that despite her knowledge that she had no licence to act as a moneylender at all relevant times, she did lend money to the deceased.

The first question which we have to address ourselves to is whether the deposit transaction was caught by the Moneylenders Ordinance, 1951 or any other statutes. If it was caught by any such statutes we shall have to consider whether the appellant should be entitled to the restitution or not.

First, we will consider the deposit transaction vis-a-vis the Moneylenders Ordinance, 1951. In the courts below a good deal of arguments centred around the word "deposit". It was the contention of the appellant that the transaction into which she entered with the deceased did not amount to a lending of money, and thereby did not make her a lender; whatever the position of the deceased was by such transaction — whether as a treasurer or proprietor of the pawnshop. In our view the legal relationship created by the transaction of the kind that took place between the appellant and the deceased was one of lending and borrowing money; the appellant being the lender and the deceased the borrower. The transaction was described as "deposit" purely to accord with factual situation. No other legal significance can be attributed to this word. No one for example who deposits his money in the bank or any financial institution will regard himself as the lender, although undoubtedly in law he is a lender, because such transaction creates debt owed by the depositee to the depositor. The legal consequence that arose from a deposit placed in a pawnshop such as that occurred in this case cannot be different from that which arises from a deposit placed with a bank. Undoubtedly by such deposit the appellant lent her money at interest to the deceased, but was she a moneylender so that without a licence under the Ordinance the transaction was void and unforceable?

We have on another occasion observed that the Moneylenders Ordinance, 1951 does not strike at moneylending but at moneylenders and at the loans

lent by them. The Ordinance is never intended to apply to an individual, or any member of the public who lends money even at interest, unless he does so as a business. (*Ngui Mui Khin & Anor.* v. *Gillespie Bros. & Company Ltd.*[1]). We agree with the courts below that the fact that the appellant by depositing a sum of $5,000 at 14.4% per annum with the deceased raises a presumption under section 3 of the Ordinance that she was a moneylender. This section enacts:—

"3. Save as excepted in paragraphs (a), (b), (c), (d) and (e) of the definition of 'moneylender' in section 2 of this Ordinance, any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender."

However, the presumption is not irrebuttable. It can be rebutted, *inter alia,* by the fact that the appellant did not deposit her money with the pawnshop as a business of moneylending — i.e. she did not carry on the business of moneylending. Section 2 of the Ordinance defines a moneylender, subject to a number of exceptions, to include —

"every person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business...."

Thus the crux of the matter is the lending of money by a person, whose business is moneylending. This is purely a question of fact (*Kirkwood* v. *Gadd*[2]). In the circumstances of this case we are of the view that the appellant was not carrying on the business of moneylending by depositing the sum in question, albeit at an interest and despite the fact and she had on two previous occasions placed two other deposits, one deposit amounting to $1,000 with the deceased in 1969 and another amounting to $5,000 with another pawnshop for two months in March 1971. Her main occupation was one of seamstress. According to her evidence, the money she deposited was a hard earned money which she saved from the occupation as a seamstress. She kept her money there as a saving and she knew that pawnshop paid interest on deposit. There seems to be no reason to reject or to disbelieve this evidence. The deposit therefore was nothing more than being incidental to her main occupation. She kept no record and issued no note or document apart form holding on to the receipt Exhibit P2 issued to her by the deceased. Her case is just like every other person who has some extra money to spare and keeps that money in bank or in any other financial institution as a saving against rainy days whilst at the same time hoping to earn some interest in the meantime. Although such a person is in law a lender, he is certainly not a moneylender, even though he may repeatedly and frequently deposit money as and whenever he has some to spare. Repetition of similar deposits *per se* does not necessarily constitute a business, still less the business of moneylending. In our view the placing of the sum in question on deposit by the appellant despite the previous two other deposits does not amount to a carrying on a business at all. Even assuming that it does so amount, the business so carried on is certainly not the business of moneylending. Far from it, such business is not the appellant's main occupation. As earlier stated, it cannot be otherwise than purely incidental to her main occupation as a seamstress. That brings her within one of the exceptions in paragraph (c) of the definition of moneylender under section 2 of the Ordinance, i.e. "a person ... bona fide carrying on any business not having for its primary object the lending of money in the course of which and for the purposes whereof he lends money is not a moneylender". We are therefore unable to agree with the decisions of the courts below that the appellant was a moneylender.

So far we have seen the case from the point of view of the appellant, the depositor or the lender of money. We must now examine the case from the point of view of the deceased, the depositee or the borrower. There can be no doubt that the main cause of the transaction is not that the appellant wanted her money to earn interest but rather the need of the deceased to finance his pawnshop business. He needed money to make loans to those who pawned articles to his pawnshop. The appellant and 40 other depositors, undoubtedly were attracted to deposit money for the use of the pawnshop by the higher rate of interest which the deceased paid or was prepared to pay for the deposits; being higher than that at which any commercial bank did to similar deposits. The learned President considered section 2 of the Banking Ordinance, 1958 and held that the deceased who received the deposit was not carrying on a banking business and therefore the transaction was not caught by that Ordinance. We entirely agree with this view. Banking business is defined by section 2 of the Ordinance as "the business of receiving money or account or deposit account, paying and collecting cheques drawn by or paid on by the customers, and making advances to customers...." Although the deceased received deposits for the use of the pawnshop business and paid interest for such deposits and would return them to depositors when required to do so the deceased did not pay and collect cheques drawn by or paid in or by the depositors. Lord Denning L.J. said in *United Dominions Trust* v. *Kirkwood*[3] that "no person can be considered a banker unless he handles cheques as freely as cash". We therefore hold that the acceptance of the deposit by the deceased did not amount to the carrying on of banking business by him.

Next, whether the deposit transaction was caught by the Trengganu Pawnbrokers Enactment No. 42 of 1356. The Enactment defines a pawnbroker as "any person who purchases or receives any articles and pays money for or advances money upon the same to an amount not exceeding $250 with or under any undertaking, agreement or condition (express implied or reasonably to be inferred from the nature of the dealing and the usage in respect thereof) that the said article may afterwards be released or repurchased upon any term whatever." The Enactment therefore only covers that aspect of the business of lending money to those who pawn their articles to the pawnshop. That aspect of business of receiving deposits from members of public to finance the loans it makes to the pawners is not within the Enactment and therefore cannot be held to be illegal by virtue of the Enactment.

The only other statute which has an important bearing upon this appeal is the Borrowing Companies Act, 1969 (Laws of Malaysia Act 6). Section 3 of the Act enacts:—

"3(1) Subject to this Act and notwithstanding the provisions

of the Companies Act 1965, relating to borrowing corporations no person shall carry on borrowing business unless it is —

(a) a public company; and

(b) a licenced borrowing company.

(a) Any person who contravenes the provisions of subsection (1) is guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both."

The borrowing business which is prohibited by the Act unless it is carried on by a public company or a licensed borrowing company i.e. a company licensed under the Act is defined in section 2 of the Act. In so far as it is relevant for our purpose a borrowing business means —

"(1) the acceptance of money on deposit or loan by a person (in this definition referred to as 'the borrower') from more than ten persons wherein such borrower is under a liability (whether or not such liability is present or future) to repay the money to these persons."

The acceptance of deposits by the deceased for the purpose of his pawnshop business from these 41 persons, one of whom was the appellant with a liability to repay them falls on all fours within this definition. In our view the deceased by accepting these deposits was carrying on a borrowing business and since he was not a public company, nor a company licensed to carry on such business, (referred to in the Act as licensed borrowing company), the Act prohibits him from accepting these deposits and treats such acceptance as an offence punishable with fine or imprisonment or with both. Such transactions, including the one which he accepted from the appellant, being contrary to the Act, are illegal void and unenforceable (section 2(g) and section 24 of the Contracts Act).

Now we come to the question whether the appellant is entitled to the restitution of her deposit. Section 66 of the Contracts Act enacts —

"66. When an agreement is discovered to be void, ... any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."

The contract was void because it contravened the provision of section 3 of the Borrowing Companies Act. The proper perspective to look at in this case is the deceased's pawnshop. It is the hub of the matter as everything else revolved around it. The pawnshop needed money to finance the making of loans to their clients. The shop attracted such money by borrowing from members of the public at rates of interest much higher than that at which any commercial bank was prepared to pay. Once it was known that the pawnshop accepted deposit at that interest rate, many people with some money to spare would naturally be willing to place it on deposit with the shop. There is no evidence to show that the pawnshop discouraged the placing of such deposits. If at all it encouraged them. The fact that 41 people had placed their money on deposit is proof of the extent of publicity of the practice of the pawnshop. It is not therefore a case of the pawnshop going to the people to borrow money so as to make the lending public moneylenders, but it is the case of the shop attracting the people to come to it so that it could borrow to satisfy its requirement and so enabled itself to carry on its business. Whatever the knowledge of the deceased was at the time of accepting the deposit, it is certainly clear that the appellant did not know that the deposit transaction was contravening any of the statutes we have considered here. Nor did she ever suspect that the transaction was unlawful by any other law. She placed her money on deposit in good faith, obtained a receipt for it duly signed by the deceased and the ninth respondent and subsequently received interest from the deceased. She only became concerned about the safety of her money when she learnt of the deceased's death. She asked the tenth respondent to return it to her but was refused and so she brought this action. She became aware of the fact only after the suit had started because the statements of defence filed by the respondent claimed that the transaction was void and unenforceable. In fact throughout the trial and appeals she maintained that the deposit was perfectly in order. In our view this case fits in squarely with the words of section 66 as an agreement which is "discovered to be void". An agreement "discovered to be void" does not mean that the contract is void on discovery or void because of discovery of illegality. It means what it says, in that the contract was *void ab initio* without the parties at the time being aware of the true legal position. It is only later that the contract is found to be void and so they became aware of its voidness. We are of the view therefore that section 66 of the contracts Act applies to this, and the appellant is entitled to the restitution of her money by the pawnshop which received an advantage from its use. (*Menaka* v. *Lum Kum Chum*[4]).

As regards interest, although we have jurisdiction to award it from a date prior to the institution of the proceedings, we are of the view that it is more proper to award interest from the date of the raising of the action (*Menaka's* case, *supra* at page 95), because prior to that date during the lifetime of the deceased the appellant was already paid interest once on her deposit. Our judgment therefore is that she is entitled to the restitution of the sum of $5,000 plus interest at 6% per annum with effect from the date of this action.

Against whom shall this order be made? The action is being maintained firstly against the first respondent, the holder of the pawnbroker's licence, secondly against the ninth respondent, an employee of the deceased proprietor, and thirdly against the deceased's estate as represented by the tenth respondent.

The first respondent gave no evidence at the trial, but in his statement of defence he said:—

"the pawnshop licence for the period January 1, 1979 till December 31, 1971 was in the name of this defendant (the first respondent) who did not authorise acceptance of any deposits which were not part of the business of pawnshop. Further more such deposits (which are denied) as are claimed were private moneylending transactions between the deceased's firm and the depositors and outside the authority of the said deceased's firm."

This statement clearly implies that the ninth respondent accepted liability if the transactions were "part of the business of pawnshop". He disclaimed in the statement that they were so. From the evidence adduced by the tenth respondent, there can be no running away from the fact that the transactions were part of the business of pawnshop, as the shop needed capital to lend money to its clients. The raising of capital by taking loans from these depositors was none other than the

most important aspect of pawnshop business without which the shop could not function. However, the evidence adduced by the appellant clearly shows that the first respondent had nothing to do with the deposit transaction. He was not present at the transaction when the deceased received the deposit, neither did he sign the deposit receipt Exhibit P2. The appellant did not ask him for the refund of the deposit. In her words, she said "if Choo Shin Shian (the deceased) were alive today I would ask for refund from him and would not ask for refund from first and ninth defendants (respondents)". She thus sued the first respondent simply because after the death of the deceased she was unable to withdraw her deposit. Thus whatever the position of the first respondent as regards this pawnshop business — be he a mere licence holder or holding any other position — on account of which he in his defence was prepared to accept liability if the transactions were for the pawnshop business, in view of the appellant's evidence that the transaction was purely between her and the deceased, we do not think it right to make the order against the first respondent.

As regards the ninth respondent, it is clear that he was employed by the deceased to be the manager of the pawnshop. He is thus an agent of the deceased. He did not sign the deposit receipt Exhibit P2 as a party to the transaction, but in the capacity of an agent witnessing the transaction. As the appellant herself did not consider him to be party to the transaction, though party to the receipt, the ninth respondent is likewise not liable to make the restitution.

Before we finally conclude the judgment, it is pertinent for us to observe that pawnbroking business needs extensive changes. This business as an institution has outlived its usefulness. In the days when credit was hard to come by, pawnbroking business played a useful role. But today the banking system and other credit facilities are so well developed that banking and those facilities are available even in rural areas, where hitherto none existed. Credit can now easily be obtained. It is true that pawnbroking business is still required to satisfy the need of the poor; but surely the system as we have today lends itself to their oppression. The interest charged is exorbitant, in the region of 24% per annum despite the fact that the loan is accompanied by the pledge of articles usually far in excess of the loan it advances. The pawning is supposed to cover a short period of time and the pawner hopes to redeem the article and pay off the loan as soon as possible. In practice because of the high rate of interest which keeps on accumulating, the pawner is unable to find money to redeem the article as it becomes more expensive to do so than buying a new one. And so the article remains unredeemed and the loan unpaid, thereby giving right to the pawnshop to sell the article to satisfy its loan and keep the excess proceeds. No wonder the pawnshops become rich and their proprietors are prepared to pay high tender prices in order to obtain licences. The Government under the legislation is merely the grantor of pawnshop licences to those who win the tender. In view of the business being carried on not really for the benefit but at the expense of the poor masses, the Government should be more active and not just be content to receive licence fees. There is a crying need to make a fundamental change to the practice. A national institution covering the whole country run and financed by the Government seems justified. Such establishment should not be run solely with a view to making profits although under no circumstances should they incur losses, but to enable those in need of short term credit who cannot get it elsewhere to pawn their articles at reasonable rate of interest so that they will be able to redeem them when they have enough funds to do so. In fact this function could easily be performed by the National Saving Bank, which is now being successfuly run. All that it needs is to add pawnbroking business to its existing functions and that law should thereby be suitably amended.

Reverting to our appeal, we now make an order that the estate of the deceased as represented by the tenth respondent do refund to the appellant the sum of $5,000 deposited by her with the deceased on January 22, 1971 and that interest on that sum at 6% per annum should also be paid with effect from the date of raising this action.

The appeal against the tenth respondent is allowed with costs here and the courts below. The appeal against the first and the ninth respondents is dismissed with no order as to costs thereof.

Order accordingly.

Solicitors: *Dulip Singh & Co.; Mahindar & Co.; Lee & Co.*

JOSEPH v. GOVERNMENT OF SARAWAK & ANOR.

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) & Syed Othman F.J.) May 7 & August 23, 1980]

[Kuching — Federal Court Civil Appeal No. 146 of 1979]

Administrative Law — Declaration — Application for declaration that plaintiff is servant of Government of Sarawak — Claim for arrears of pay — Establishment principles.

The appellant had been engaged as a Senior Technical Assistant in the Public Works Department. He was seconded to the Kuching Water Board and while working there received a salary higher than what he would have got in the P.W.D. as he was given an acting allowance. Subsequently the appellant claimed to return to the P.W.D. He sought a declaration that he was at all material times a servant of the Government of Sarawak and he claimed the benefit of pay increases recommended by the Suffian and Harun Committees and arrears. The learned trial judge made an order declaring that the appellant had been at all material times a servant of the Government of Sarawak. Subsequently he dismissed the action, including the claim for arrears of salary. The appellant appealed.

Held: in this case the administrative ruling was that as the appellant on secondment to the statutory body received more salary than what he would get on his substantive post the question of arrears did not arise. The learned judge was therefore right in holding that the appellant had failed to prove that he was entitled in law to the arrears.

FEDERAL COURT.

T.O. Thomas for the appellant.

Denis Ong, Assistant Attorney-General, for the 1st respondent.

Daniel Tajem for the 2nd respondent.

Cur. Adv. Vult.